

No. PD-0236-20

**IN THE
COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS**

FILED
COURT OF CRIMINAL APPEALS
7/31/2020
DEANA WILLIAMSON, CLERK

TIMOTHY MARK WEST

APPELLEE/PETITIONER

V.

THE STATE OF TEXAS

APPELLANT/RESPONDENT

**THE STATE'S MOTION FOR AN EXTENSION OF TIME
TO FILE THE STATE'S REPLY BRIEF**

TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS:

COMES NOW, the State of Texas, pursuant to Rules 10.5(b) and 70 of the Texas Rules of Appellate Procedure, and requests an extension of time in which to file the State's Reply Brief, and would show the Court as follows:

1. On September 13, 2016, the State indicted Appellee (the original indictment) for three counts of knowingly possessing or attempting to possess a controlled substance, Tramadol, by misrepresentation, fraud, forgery, deception, or subterfuge, in violation of Texas Health & Safety Code § 481.129. The case was assigned cause number 20160D04320.
2. The State re-indicted Appellee (the second indictment) on June 5, 2018, for three counts of knowingly possessing or attempting to possess a controlled substance, Oxycodone, by misrepresentation, fraud, forgery, deception, or subterfuge, with the same dates as the original indictment, and thereafter dismissed the original indictment.
3. After a hearing, the trial court dismissed the second indictment because it

failed to show on its face that the trial court had jurisdiction over the matter, as the limitations period had expired, and no tolling language was present in the second indictment.

4. To rectify this deficiency, the State then re-indicted Appellee (the third indictment) on June 26, 2018, for three counts of knowingly possessing or attempting to possess a controlled substance, Oxycodone, by misrepresentation, fraud, forgery, deception, or subterfuge, with the same dates as the original indictment, and added an identical, tolling paragraph to each count.
5. On July 9, 2018, Appellee filed a motion to quash the third indictment on limitations grounds, challenging the application of the tolling rules.
6. After hearing the matter and considering the parties' arguments, the trial court granted Appellee's motion to quash the third indictment.
7. On November 5, 2018, the State perfected appeal by filing notice of appeal with the District Clerk.
8. On February 14, 2020, in a published opinion, the Eight Court of Appeals reversed the judgment of the trial court, set aside the trial court's order granting the motion to quash, and remanded the case for further proceedings, in a case styled, *The State of Texas v. Timothy West*, cause number 08-18-00190-CR.
9. The Appellee's Petition for Discretionary Review was filed on March 19, 2020.
10. This Court granted the Appellee's Petition for Discretionary Review on June 24, 2020.
11. The Appellee's PDR Brief was filed on July 24, 2020.
12. The State's Reply Brief is due on August 23, 2020.
13. This extension is requested for 10 days until September 2, 2020.

14. This is the State's first motion for extension of time to file its Reply Brief.
15. The undersigned requests this extension because he is responsible for preparing and filing in the Eighth Court of Appeals the State's briefs in the following matters:
 - a. *Leonel Hernandez v. The State of Texas*, Cause Number 08-19-00152-CR, due July 31, 2020;
 - b. *Jonaton Perez v. The State of Texas*, Cause Number 08-19-00155-CR, due August 18, 2020; and
 - c. *Gerardo Ogaz v. The State of Texas*, Cause Number 08-19-00137-CR, due August 27, 2020.

PRAYER

WHEREFORE, the State prays that its extension request will be granted until September 2, 2020.

Respectfully submitted,

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34th JUDICIAL DISTRICT
/s/ Ronald Banerji
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ATTORNEYS FOR THE STATE

CERTIFICATE OF SERVICE

(1) The undersigned does hereby certify that on July 31, 2020, a copy of the foregoing motion for extension was sent by email, through an electronic-filing-service provider, to Appellant's attorney: William Ahee, wahee@epcounty.com.

(2) The undersigned also does hereby certify that on July 31, 2020, a copy of the foregoing motion for extension was sent by email, through an electronic-filing-service provider, to the State Prosecuting Attorney, information@SPA.texas.gov.

/s/ Ronald Banerji

RONALD BANERJI

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